

RECORDATION NO.

12679

Filed 1426

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref.: 1240-141]

ASSIGNMENT OF SUBLEASE AND AGREEMENT

Dated as of November 15, 1980

By and Between

EARLY & DANIEL INDUSTRIES, INC.,
Lessee,

and

C.I.T. FINANCIAL SERVICES, INC.,
Lessor.

ASSIGNMENT OF SUBLEASE AND AGREEMENT
dated as of November 15, 1980 (the "Sublease
Assignment"), by and between EARLY & DANIEL
INDUSTRIES, INC. (the "Lessee"), and C.I.T.
FINANCIAL SERVICES, INC. (the "Lessor"),
acting through its agent, C.I.T. Corporation.

WHEREAS Tidewater Grain Company (the "Sublessee"),
has assigned to the Lessor, pursuant to a Purchase Order
Assignment dated as of the date hereof, certain of its
interests in a Purchase Agreement between the Sublessee and
Pullman Incorporated (Pullman Standard Division);

WHEREAS the Lessor has accepted said Assignment
and proposes to purchase from the Builder such units of
railroad equipment described in Schedule A to the Lease
(as hereinafter defined) as are delivered and accepted
under the terms of the Lease (the "Units");

WHEREAS the Lessor and the Lessee have entered
into a Lease of Railroad Equipment dated as of the date
hereof (the "Lease"), pursuant to which the Lessee leases
from the Lessor such number of Units as are delivered and
accepted under the Lease, at the rentals and for the terms
and upon the conditions therein provided;

WHEREAS the Lessee and the Sublessee have entered
into a Sublease of Railroad Equipment dated as of the date
hereof (the "Sublease"), pursuant to which the Sublessee
leases from the Lessee such number of Units as are so
delivered and accepted under the Lease, at the rentals and
for the terms and conditions therein provided;

WHEREAS, in order to provide security for the
obligations of the Lessee under the Lease, the Lessee
desires to assign to the Lessor for security purposes
the Lessee's rights in, to and under the Sublease.

NOW, THEREFORE, in consideration of the premises
and of the payments to be made and the covenants herein-
after mentioned to be kept and performed, the parties
hereto agree as follows:

1. The Lessee hereby assigns, transfers and sets
over unto the Lessor, as collateral security for the

payment and performance of the obligations of the Lessee under the Lease, all the right, title and interest, powers, privileges, and other benefits of the Lessee under the Sublease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessee from the Sublessee under or pursuant to the provisions of the Sublease whether as rent, casualty payment, termination payment, indemnities, liquidated damages or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Sublease, and to do any and all other things whatsoever which the Lessee is or may become entitled to do under the Sublease. In furtherance of the foregoing assignment, the Lessee hereby irrevocably authorizes and empowers the Lessor in its own name, or in the name of its nominee, or in the name of the Lessee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessee is or may become entitled under the Sublease, and to enforce compliance by the Sublessee with all the terms and provisions thereof.

The Lessor agrees to accept any Payments made by the Sublessee for the account of the Lessee pursuant to the Sublease. To the extent received, the Lessor will apply such Payments to satisfy the obligations of the Lessee under the Lease, and, so long as no Event of Default (or event which with notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing under the Lease, any balance shall be paid to the Lessee.

2. This Sublease Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Lessor to, or transfer, or pass, or in any way affect or modify the liability of the Lessee under the Sublease, it being understood and agreed that notwithstanding this Sublease Assignment or any subsequent assignment, all obligations of the Lessee to the Sublessee shall be and remain enforceable by the Sublessee, its successors and assigns, against, and only against, the Lessee or persons other than the Lessor.

3. The Lessee will faithfully abide by, perform and discharge each and every obligation, covenant and

agreement which the Sublease provides is to be performed by the Lessee; without the written consent of the Lessor, the Lessee will not anticipate the rents under the Sublease, or waive, excuse, condone, forgive or in any manner release or discharge the Sublessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Sublessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Sublease, and the Lessee agrees that any amendment, modification or termination thereof without consent shall be void.

Should the Lessee fail to make any payment or to do any act which this Sublease Assignment requires the Lessee to make or do, then the Lessor, but without obligation so to do, after first making written demand upon the Lessee, but without releasing the Lessee from any obligation hereunder, may make or do the same in such manner and to such extent as the Lessor may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Lessor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessee contained in the Sublease; and in exercising any such powers, the Lessor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessee will reimburse the Lessor for such costs, expenses and fees.

4. The Lessee does hereby constitute the Lessor the true and lawful attorney of the Lessee, irrevocably, with full power (in the name of the Lessee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Sublease to which the Lessee is or may become entitled, to enforce compliance by the Sublessee with all the terms and provisions of the Sublease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Lessor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the obligations of the Lessee under the Lease or the

expiration or termination of the term of the Sublease, this Sublease Assignment and all rights herein assigned to the Lessor shall terminate, and all estate, right, title and interest of the Lessor in and to the Sublease, if any, shall revert to the Lessee.

6. The Lessee will pay and discharge any and all claims, liens, charges or security interests on the Sublease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessee, or its successors and assigns (other than the Lessor), not arising out of the transactions contemplated by the Lease, or the Sublease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease, or the Sublease, or such rentals or other payments equal or superior to the interest therein of the Lessor, unless the Lessee shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect such interests of the Lessor.

7. The Lessee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Lessor in order to confirm or further assure the interest of the Lessor hereunder.

8. The Lessor may assign all or any of the rights assigned to it hereby or arising under the Sublease, including, without limitation, the right to receive any Payments due or to become due, and the power to act as the Sublessee's true and lawful attorney. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Lessor hereunder. The Lessor will give written notice to the Lessee and the Sublessee of any such assignment.

9. This Sublease Assignment and Agreement shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Lessee shall cause copies of all notices

EARLY & DANIEL INDUSTRIES, INC.,

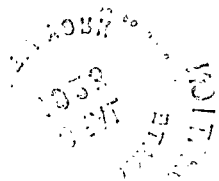
by

Robert H. Hall
President

[Corporate Seal]

Attest:

Donald S. Thomas
Assistant Secretary



received in connection with the Sublease and all payments thereunder to be promptly delivered or made to the Lessor at its address set forth in the Lease or at such other address as the Lessor shall designate.

11. The Lessor hereby agrees with the Lessee that the Lessor will not, so long as no Event of Default under the Sublease or the Lease (or event which with notice or lapse of time or both would become an Event of Default) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessee to the Lessor by this Sublease Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof and to receive indemnities pursuant to the Sublease and the Consent and Agreement attached hereto and dated as of the date hereof, and that, subject to the terms of the Lease and the Sublease, the Lessee may, so long as no Event of Default under the Lease or the Sublease (or event which with notice or lapse of time or both would become an Event of Default) has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

C.I.T. FINANCIAL SERVICES, INC.,

by

C.I.T. CORPORATION, as Agent,

by

Keith L. Fitch
Vice President

[Corporate Seal]

Attest:

[Signature]
Assistant Secretary

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EARLY & DANIEL INDUSTRIES, INC.,

by

Robert Hall

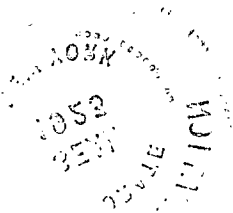
President

[Corporate Seal]

Attest:

Donald E. Thurman

Assistant Secretary



received in connection with the Sublease and all payments thereunder to be promptly delivered or made to the Lessor at its address set forth in the Lease or at such other address as the Lessor shall designate.

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C.I.T. FINANCIAL SERVICES, INC.,

by

C.I.T. CORPORATION, as Agent,

by

Kent E. Fittel
Vice President

[Corporate Seal]

Attest:

[Signature]
Assistant Secretary

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 23rd day of December 1980, before me personally appeared Robert C. Hall, to me personally known, who, being by me duly sworn, says that he is the President of EARLY & DANIEL INDUSTRIES, INC., an Indiana corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Doris J. Bialek
Notary Public

[Notarial Seal]

My Commission expires

DORIS J. BIALEK
NOTARY PUBLIC, State of New York
No. 24-0284525
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1982

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 23 day of December 1980, before me personally appeared Keith L. Fitch, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Michael T. Concannon
Notary Public

[Notarial Seal]

My commission expires

MICHAEL T. CONCANNON
Notary Public, State of New York
No. 41-4711290
Qualified in Queens County
Commission Expires March 30, 1982

CONSENT AND AGREEMENT

The undersigned, TIDEWATER GRAIN CORPORATION ("Sublessee"), the Sublessee named in the Sublease (the "Sublease") referred to in the foregoing Assignment of Sublease and Agreement (the "Sublease Assignment"), hereby (a) acknowledges receipt of a copy of the Sublease Assignment and (b) consents to all the terms and conditions of the Sublease Assignment and agrees that:

(1) it will pay or cause to be paid all rentals, casualty payments, termination payments, liquidated damages, indemnities and other moneys provided for in the Sublease (which moneys are hereinafter called the "Payments") due and to become due under the Sublease or otherwise in respect of the Units leased thereunder, directly to C.I.T. FINANCIAL SERVICES, INC. (the "Lessor"), the assignee named in the Sublease Assignment, at the address set forth in the Sublease (or at such other address as may be furnished in writing to the Sublessee by the Lessor);

(2) the Lessor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Sublessee under the Sublease as though the Lessor were named therein as the lessor;

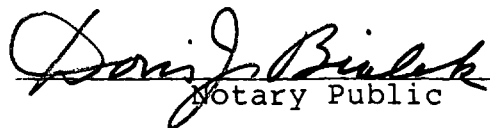
(3) the Lessor shall be entitled to rely on the Sublessee's representations and warranties made pursuant to the Sublease as if made herein to the Lessor;

(4) the Lessor shall not, by virtue of the Sublease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Sublease or otherwise; and

(5) the Sublease shall not, without the prior written consent of the Lessor, be terminated (except in accordance with its terms) or modified, nor shall any action be taken or omitted by the Sublessee the taking or omission of which might result in an alteration or impairment of the Sublease or the Sublease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 23rd day of December 1980, before me personally appeared ROBERT C. HALL, to me personally known, who, being by me duly sworn, says that he is the President of EARLY & DANIEL INDUSTRIES, INC., an Indiana corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


Notary Public


[Notarial Seal]

My Commission expires

DORIS J. BIALEK
NOTARY PUBLIC, State of New York
No. 24-0284525
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1981

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 23 day of December 1980, before me personally appeared Keith L. Fitch, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


Notary Public

[Notarial Seal]

My commission expires

MICHAEL T. CONCANNON
Notary Public, State of New York
No. 41-4711290
Qualified in Queens County
Commission Expires March 30, 1982

CONSENT AND AGREEMENT

The undersigned, TIDEWATER GRAIN CORPORATION ("Sublessee"), the Sublessee named in the Sublease (the "Sublease") referred to in the foregoing Assignment of Sublease and Agreement (the "Sublease Assignment"), hereby (a) acknowledges receipt of a copy of the Sublease Assignment and (b) consents to all the terms and conditions of the Sublease Assignment and agrees that:

(1) it will pay or cause to be paid all rentals, casualty payments, termination payments, liquidated damages, indemnities and other moneys provided for in the Sublease (which moneys are hereinafter called the "Payments") due and to become due under the Sublease or otherwise in respect of the Units leased thereunder, directly to C.I.T. FINANCIAL SERVICES, INC. (the "Lessor"), the assignee named in the Sublease Assignment, at the address set forth in the Sublease (or at such other address as may be furnished in writing to the Sublessee by the Lessor);

(2) the Lessor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Sublessee under the Sublease as though the Lessor were named therein as the lessor;

(3) the Lessor shall be entitled to rely on the Sublessee's representations and warranties made pursuant to the Sublease as if made herein to the Lessor;

(4) the Lessor shall not, by virtue of the Sublease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Sublease or otherwise; and

(5) the Sublease shall not, without the prior written consent of the Lessor, be terminated (except in accordance with its terms) or modified, nor shall any action be taken or omitted by the Sublessee the taking or omission of which might result in an alteration or impairment of the Sublease or the Sublease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

(6) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Lease and the Sublease and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement, when accepted by the Lessor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said state.

TIDEWATER GRAIN COMPANY,

by


Chairman

[Seal]

Witness:



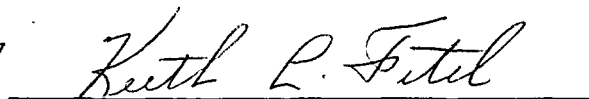
The foregoing Consent and Agreement is hereby accepted, as of November 15, 1980.

C.I.T. FINANCIAL SERVICES, INC.,

by

C.I.T. CORPORATION, as Agent,

by


Vice President

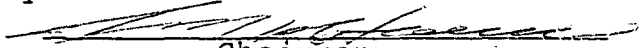
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This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement, when accepted by the Lessor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said state.

TIDEWATER GRAIN COMPANY,

by


Chairman

[Seal]

Witness:



The foregoing Consent and Agreement is hereby accepted, as of November 15, 1980.

C.I.T. FINANCIAL SERVICES, INC.,

by

C.I.T. CORPORATION, as Agent,

by


Vice President